

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON

Jeremy Marcum

V.

Plaintiff

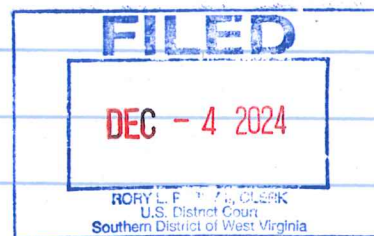
CASE # 2:24-cv-00697

Michael Dempsey

JURY TRIAL DEMANDED

ZACHARY White

(Correctional officers Defendants
Sued in their individual CAPACITIES)



PLANTIFFS VERIFIED COMPLAINT

Now Comes Plaintiff, Jeremy Allen Marcum
Pro-se Here by States His Verified Complaint
AS follows:

A. PARTIES

- (1) Plaintiff, Jeremy Marcum (Herein After referred to AS Plaintiff) IS A citizen and Resident of West Virginia And At All times Relevant Incarcerated At the Mount olive Correctional Complex.
- (2) Defendants Michael Dempsey And ZACHARY White Are And Were At All times Relevant employed by the West Virginia Department of Corrections and Rehabilitation, Herein After "WVDCR" AS Correctional officers At the Mount olive Correctional Complex.

(1)

B. JURISDICTION

- (3) This Action is brought pursuant 42 U.S.C. 1983 The Eighth Amendment to the United States Constitution. Jurisdiction is based upon 28 U.S.C. 1331, 1343, and 2202.

C. BACKGROUND

- (4) Plaintiff, Jeremy Marum At All times Relevant WAS housed in Williams unit 2, Pod 4, Cell # 401. On October 27th 2024, Sunday, between the hours of 10:30 Am - 1:00 pm

D. STATEMENT OF FACTS

- (5) On Sunday, October 27th At Approximately 10:45 AM While Plaintiff WAS Secured in his Single Man Segregation Cell that WAS Secured by the Regular door Locking Mechanism Along with the Dead bolt Locking Mechanism, which is Welded to the out side of the door, & WAS Locked.
- (6) At This time (10:45 Am) Plaintiff Alleges And Can Prove WAY beyond Any Shadow of doubt that Sergeant Michael Dempsey Used Excessive Force against Plaintiff by willfully, maliciously and Sadistically, Wrecklessly Assaulting Plaintiff with OC Pepperspray with the intent of Wanton infliction of Pain, with 4 or 5 bursts of Pepperspray over the course of 3-5 Seconds to Punish Plaintiff for being A Smart ellic, Making Comments And mild insults verbally, All While C.O. 1 Zachary White Acted with deliberate indifference when he simply stood directly beside Sergeant Dempsey And Failed to intervene Or even Attempt to intervene on Plaintiffs behalf.

- (7) Defendants Michael Dempsey And Zachary White Were Acting within the scope of thier employment, and under color of state LAW of West Virginia, At All times Relevant herein.
- (8) The intentional, Malicious & Sadistic, Will Full Acts and omissions of both defendants directly Resulted in Plaintiff being Subjected to And suffering: SEVERE Pain, suffering, Temparary blindness, Intense burning of skin on the face, Arms, Neck, Chest, Stomache, And intense burning of Lungs, Throat, NASAL PASSAGES, And A DARK Red RASH Did form on Plaintiffs bodily skin, Plaintiff developed Soar throat, CAUGHING & HACKING Consistantly through out the following 7 days.
- (9) Plaintiff HAS Exhausted his Administrative Remedies
SEE Exhibit 1
- (10) AS A Further Direct proximate Result OF the MALICIOUS And Sadistic Chemical Assult by Sergeant Michael Dempsey Along with C.O. 1, ZACHARY WHITES failure to intervene to STOP the Assult, Plaintiff Further suffers: being in A State of Constant Fear for his SAFETY When Defendants Are on duty, PARANOIA that it MAY HAPPEN Again With Defendants, PANNICK ATTACKS do to the PARANOIA, Mental Anguish, Night SWEATS, humiliation, embarrasment, and loss of Plaintiffs Personal Dignity.

E. Excessive use of Force

- (11) Plaintiff Re-Alleges And incorporates by Reference each and every Allegation Contained in PARAGRAPHS 1-10 AS if fully set forth here in.
- (12) Plaintiff HAS Undeniable proof via 18 Stationary Video CAMERAS mounted to the Walls and Ceiling of Williams unit 2, Pod 4, Along with Eyewitness Sworn Affidavits of eye witness & Plaintiff SEE Exhibits 2-3
- (13) AS Sergeant Michael Dempsey And C.O.-1, Zachary White Were Shutting the open food slots on the bottom tier of Q2 - Pod 4, Starting with Cell # 408, working backwards that by the time Sergeant Michael Dempsey & CO1 Zachary White MADE it to Plaintiffs Cell (#401) that Sergeant Dempsey had managed to pull his OC Pepperspray without Plaintiff seeing, And AS Sergeant Dempsey Faked Closing Plaintiffs food slot, he quickly Serked it back open and began the 3-5 Second OC Pepperspray Chemical Saturation of Plaintiff by Repeatedly spraying Plaintiff 4-5 times At point blank Range All without MAKING Any Efforts to temper force, without giving Plaintiff Any COMANDS, Warnings, Orders of Anykind. Plaintiff Never posed AThreat to either of the 2 defendants safety, or the Plaintiffs own safety, or Any State property. Plaintiff NEVER, not 1 time kicked the door, or punched the door. The entirety of this PARAGRAPH Along with the other 17 PARAGRAPHS Are evidence of Malicious and Sadistic intent, And Excessive use of force, IN Violation of Plaintiffs Constitutional Rights.

(4)

- (14) AS to the "Whitley" Factors, there WAS Absolutely no Need for Physical force, so the Chemical Assault is therefore Excessive use of force, which violates Plaintiffs Eighth Amendment Right to the United States Constitution, And by Not Making Any Efforts to temper force, or give Plaintiff Any orders or commands further proves And is evidence of Defendant Michael Dempsey & Defendant Zachary Whites Malicious and Sadistic and cruel intent, which is therefore Wanton infliction of Pain & Suffering As Punishment
- (15) It is clearly Established precedent that it is A violation of the Eighth Amendment for Prison officials to use MACE, tear gas, or Chemical Agents "in quantities greater than Necessary, or for the sole purpose of the infliction of pain".
- (16) Both defendants knew or should have known that such Conduct WAS Reasonably Certain to CAUSE SEVERE emotional Distress As well As Physical harm. Despite said knowledge Defendants Dempsey & White Conducted themselves in A Wrongful Manner When Dempsey Physically Chemically Assaulted Plaintiff with OC spray while Plaintiff posed NO threat or harm AS C.O.1, Zachary White stood directly beside Sergeant Dempsey and let it happen & Never Made Any efforts what so ever to stop the Assault At Any time. C.O.1, Zachary White stood About 8-10 inches beside Sergeant Michael Dempsey.

- (17) The OC SPRAYING WAS UNWARRANTED, UNNECESSARY, and UNJUSTIFIED. Both Dempsey & White's Actions were done to Plaintiff with the intent to inflict UNNECESSARY harm, humiliation, embarrassment, physical pain, suffering, and emotional distress upon him and WAS done with MALICIOUS and SADISTIC intent with A Wanton infliction of Pain & Suffering and WAS CARRIED OUT under the COLOR OF STATE LAW OF the State of West Virginia.
- (18) The Conduct described herein deprived Plaintiff of his Rights & Privileges under the Constitution of the United States of America.
- (19) Defendant Zachary White Remained Deliberately indifferent to the Chemical Attack, In Which he had Ample opportunity to stop Defendant Dempsey from Repeatedly OC SPRAYING Plaintiff over the course of 3-5 seconds straight, Defendant White Rather chose to stand by and let it happen.
- (20) The Conduct of Defendant Dempsey WAS so egregious so as to constitute of Plaintiff's Eighth Amendment Rights because the Failure to temper, or Give Any Commands or orders what so ever And the deliberate indifference to to the Pain & suffering that would result Are evidence of both defendants MALICIOUS & SADISTIC intent, which Violates Their Academy Training, MOC Policy Procedure precedent And Plaintiff's Eighth Amendment Right to the United States Constitution.

(21) AS A Result of the Aforementioned violation of Plaintiff's Civil Rights, by both defendants, who Acted Under Color of State Law of West Virginia & within the scope of their employment, Plaintiff has suffered Mental Anguish, Embarrassment, humiliation, And Physical Injury and has otherwise been greatly damaged through both Defendants conduct and is therefore entitled to:

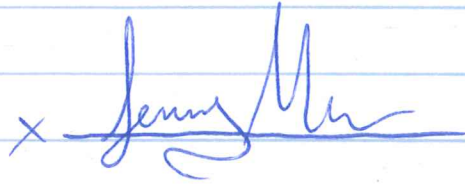
A. COMPENSATORY DAMAGES	-	15,000.00
B. Punitive DAMAGES	-	15,001.00
C. PHYSICAL PAIN AND Suffering	-	15,000.00
D. MENTAL PAIN AND Suffering PAST/FUTURE	-	15,000.00
E. Humiliation, Embarrassment, Degradation	-	15,000.00
		<u>75,001.00</u>

(22) IN Addition to these Compensatory fees & other fees, Plaintiff seeks also to Recover under 42 U.S.C. §§ 1988, the Attorneys fees and Costs included during the course of this litigation.

(23) The Repeated Actions And inActions by both defendants Against Plaintiff were Reprehensible, will full, and Wanton, MALICIOUS & SADISTIC, and in blatant Disregard to the Rights Owed to Plaintiff, thereby Justifying An Award OF Punitive damages to the extent that such damages Are covered by defendants Applicable insurance coverage.

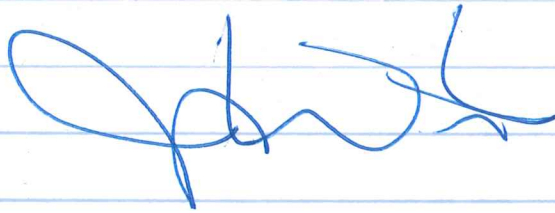
(7)

Respectfully Submitted.

x 

Jeremy Macum #3518741
Mount Olive Correctional Complex
1 Mountain Side Way
Mount Olive, WV
25185

Pro - se



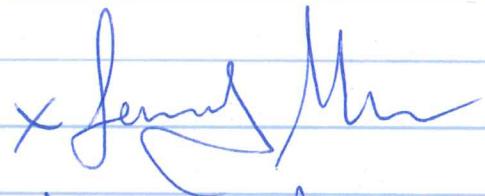


(8)

VERIFICATION

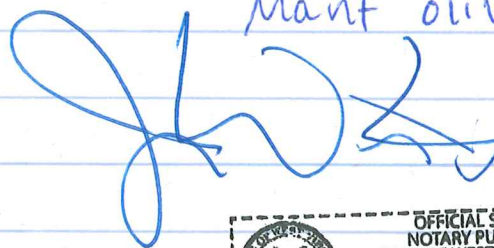
STATE OF WEST VIRGINIA
County of KANAWHA, to wit:

I, Jeremy Allen Marcum Swear under the penalty of perjury depose and say that the facts contained in this Verified Complaint, are true, except insofar as they are therein stated to be upon information and belief, and that I believe them to be true.

x 

DATE: 11-4-2024

Jeremy Marcum
Mount Olive Correctional Complex
one mountain side way
Mount olive, WV



JS/PS

